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9 **IN THE UNITED STATES DISTRICT COURT**
10 **FOR THE DISTRICT OF MONTANA**
10 **MISSOULA DIVISION**

11 UNITED STATES OF AMERICA,)
11 Plaintiff,) No. CR 21-29-M-DLC
12 vs.)
12) **TRANSCRIPT OF ARRAIGNMENT**
13 MICHAEL BLAKE DEFRENCE,)
13 Defendant.) **ON SECOND SUPERSEDING**
14) **INDICTMENT**
14)
15

16 **BEFORE THE HONORABLE KATHLEEN L. DeSOTO**
16 **UNITED STATES DISTRICT COURT MAGISTRATE JUDGE**
17 **FOR THE DISTRICT OF MONTANA**

18 Russell Smith United States Courthouse
19 201 East Broadway
20 Missoula, Montana 59802
20 Thursday, November 18, 2021
21 2:08 to 2:14 p.m.

22

23

24 Proceedings recorded by digital audio recording
25 Transcript produced by computer-assisted transcription

APPEARANCES

For the Plaintiff: MS. JENNIFER S. CLARK
Assistant U.S. Attorney
P.O. Box 8329
Missoula, Montana 59807

For the Defendant: MR. MICHAEL DONAHOE
Attorney at Law
Federal Defenders of Montana
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1 PROCEEDINGS

2 (Open court.)

3 (Defendant present.)

4 THE COURT: All right. And next is an initial
5 appearance on the second superseding indictment in *United*
6 *States of America v. Michael Blake Defrance.* It's
7 CR 21-29-M-DLC.

8 All right, Mr. Defrance. If you could come up to
9 the podium there with your attorney?

10 (Pause.)

11 THE COURT: All right. So, Mr. Defrance, do you
12 have a copy of the second superseding indictment there?

13 THE DEFENDANT: Yes, I do.

14 THE COURT: Okay. So the grand jury has returned
15 this second superseding indictment against you finding
16 probable cause to charge you as follows:

17 You're charged in Count 1 with being a prohibited
18 person in possession of firearms and ammunition. That's in
19 violation of Title 18, United States Code, Section 922(g)(9).
20 The maximum penalty for that count is up to ten years'
21 imprisonment, a \$250,000 fine, and three years of supervised
22 release.

23 You're charged in Counts 2 through 4 with false
24 statement during a firearms transaction. Those counts are in
25 violation of Title 18, United States Code, Section 922(a)(6).

1 The maximum penalty for those counts is up to ten years'
2 imprisonment, a \$250,000 fine, and three years of supervised
3 release.

4 As to each of those counts, of course, there is a
5 special assessment of \$100 that would be due and owing at the
6 time of sentencing should you either plead guilty to those
7 counts or be found guilty after a trial.

8 There's also a criminal forfeiture allegation in
9 this second superseding indictment. That is pursuant to
10 Title 18, United States Code, Section 924(d), and that is --
11 forfeiture is simply the mechanism that allows the government
12 to seize and requires you to forfeit any ownership interest
13 that you may have in property that is connected to the
14 criminal conduct alleged in this charging document.

15 So I need to advise you of your rights:

16 You have the right to remain silent. Anything you
17 say can and will be used against you -- will be used against
18 you in these proceedings, but you don't have to say anything
19 at all. Because of your attorney/client relationship with
20 Mr. Donahoe, the conversations that you have with him will
21 remain private, so you should feel comfortable in speaking
22 with him about matters relating to your case. You have the
23 right to have Mr. Donahoe present at any questioning by law
24 enforcement, if there is ever a lineup in your case, and
25 obviously at any and all court proceedings.

1 Do you understand these rights?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Mr. Defrance, as you stand here right
4 now, do you have any physical health issues or mental health
5 issues that would make it difficult for you to understand what
6 we're doing here today?

7 THE DEFENDANT: No, I do not.

8 THE COURT: All right.

9 Mr. Donahoe, have you had the chance to review and
10 discuss the second superseding indictment with your client?

11 MR. DONAHOE: I have.

12 THE COURT: And does he wish it to be read?

13 MR. DONAHOE: We would waive that. Thank you.

14 THE COURT: All right.

15 Mr. Defrance, do you understand the nature of the
16 allegations contained against you in this second superseding
17 indictment?

18 THE DEFENDANT: Yes.

19 THE COURT: And do you understand the maximum
20 penalties that can be imposed upon you should you either plead
21 guilty to the counts of the second superseding indictment or
22 be found guilty after a trial?

23 THE DEFENDANT: Yes.

24 THE COURT: Mr. Donahoe, how does your client wish
25 to plead?

1 MR. DONAHOE: Not guilty pleas, Your Honor.

2 THE COURT: And deny forfeiture?

3 MR. DONAHOE: Yes, Your Honor.

4 THE COURT: All right. Well, I believe we have
5 already handled scheduling dates in this case, so we will not
6 be issuing any additional scheduling matters.

7 Ms. Clark, let me give you the *Brady* order:

8 Under Criminal Rule 5(f), the government is ordered
9 to comply with its disclosure obligations under *Brady v.*
10 *Maryland* and related cases. The failure to do so may result
11 in sanctions. And we will put a written text order in the
12 docket in this case.

13 MS. CLARK: Thank you.

14 THE COURT: And I understand that Mr. Defrance is in
15 compliance with his pretrial conditions; is that correct?

16 MR. DONAHOE: He is.

17 THE COURT: All right.

18 So, Mr. Defrance, you will be continued release on
19 all the pretrial conditions that I previously imposed. Okay?

20 THE DEFENDANT: Yes.

21 MR. DONAHOE: Okay.

22 THE COURT: Anything further, Mr. Donahoe?

23 MR. DONAHOE: Yeah. If I could be heard just
24 quickly in relation to the *Brady* order?

25 The addition of these counts in terms of

1 scheduling --

2 THE COURT: Okay.

3 MR. DONAHOE: -- and I can take this up with Judge
4 Christensen, but I'll have additional motions in relations to
5 those -- in relation to those counts, so I'm gonna need time
6 for that.

7 But more particularly, I would like to put the
8 government on notice. I can make and will make a formal
9 discovery request in writing, but from previous work, the
10 addition of those two counts involves ATF Form 4473. Those
11 forms provoke some kind of process with ATF. Once that
12 transaction is being gone through in the pawnshop or the gun
13 store --

14 THE COURT: Um-hmm.

15 MR. DONAHOE: -- or wherever, and they call it in,
16 it's assigned a number and there's a followup, and sometimes
17 an agent actually on the ground looks at all that data and
18 makes some kind of determination whether the person is
19 prohibited.

20 I want all of those documents. And if they're gonna
21 be hard to find or, you know, however that works --

22 THE COURT: Okay.

23 MR. DONAHOE: -- I would appreciate that we get
24 working on that as soon as possible.

25 THE COURT: Okay. And I don't, of course, have the

1 ability to change the scheduling order, myself, so I think
2 what you would have to do, then, is just file a motion to
3 continue under the interests of justice, 3161, and then make
4 all those statements to the Court. But --

5 MR. DONAHOE: Yeah. And I will do that.

6 THE COURT: Okay.

7 MR. DONAHOE: Yeah.

8 THE COURT: All right.

9 Anything other than that?

10 MR. DONAHOE: That's it.

11 THE COURT: Ms. Clark, anything from the government?

12 MS. CLARK: No, Your Honor.

13 THE COURT: All right. We will be in recess on that
14 matter.

15 (The proceedings were concluded at 2:14 p.m.)

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TRANSCRIBER'S CERTIFICATE

I, JoAnn Jett Corson, certify that the foregoing transcript is an accurate transcription, to the best of my ability, from the digital audio recording of the proceedings given at the time and place hereinbefore mentioned; and that a certified copy of this transcript will be filed electronically with the Court.

I further certify that I am not attorney for, nor
employed by, nor related to any of the parties or attorneys to
this action, nor financially interested in this action.

11 IN WITNESS WHEREOF, I have set my hand at Missoula,
12 Montana this 15th day of December, 2021.

/s/ JoAnn Jett Corson

JoAnn Jett Corson
United States Court Reporter